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IN THE

Supreme Court of the United States

JOHN MICHAEL COOKE, RON SWOR, AND THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL,

Petitioners,

v.

TIM TUBRA,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Oregon

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the First Amendment to the U.S. Constitution bar a pastor's defamation claim against the church that employed him when the claim is based entirely on statements made by church officials solely within the church explaining to its members why the church disciplined and terminated the pastor?

CORPORATE DISCLOSURE STATEMENT

Petitioner The International Church of the Foursquare Gospel (the "Church") has no parent corporation and no publicly held company owns more than 10 percent of its stock.

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On Petition for a Writ of Certiorari to the Court of Appeals of Oregon

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the judgment of the Court of Appeals of Oregon.

OPINION AND ORDERS BELOW

The Supreme Court of Oregon's Order Denying Review of the Court of Appeals of Oregon's decision is attached as App. A. (References to "App." are to the attached Appendix.) The court's published opinion in *Tubra v. Cooke, et al.*, 225 P.3d 862 (Or. App. 2010), *rev. denied*, 237 P.3d 221 (Or. 2010), is attached as App. B. The trial court's Order granting petitioners' motion for judgment notwithstanding the verdict ("JNOV") is attached as App. C.

BASIS FOR JURISDICTION

The Supreme Court of Oregon's Order Denying Review of the Court of Appeals of Oregon's decision was entered on July 29, 2010. (App. 1a.) This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The First Amendment to the U.S. Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

A. A Case of First Impression for This Court

This is a civil defamation action arising from the termination of respondent Tim Tubra ("plaintiff"), then a Foursquare Church pastor, by the Church acting in accord with Church policy through two of its officials, petitioners John Michael Cooke ("Pastor Cooke") and Ron Swor ("Pastor Swor"). Plaintiff did not directly challenge the Church's termination decision, but instead filed a lawsuit, claiming that he was defamed in the course of the Church's disciplinary process. It is undisputed that all allegedly defamatory statements were made solely within the Church by Church officials and only to Church members, explaining that plaintiff was dismissed because he misappropriated Church money, lied, and was "sowing discord" within the Church. (Third Amended Complaint ("Complaint") (App. D).)

Creating its own new test to decide that the First Amendment was not infringed, the Court of Appeals of Oregon reversed the JNOV for petitioners based on the First Amendment and reinstated the jury verdict for plaintiff.

At its core, this case involves the First Amendment right of a church to exercise its religion, speak to its members, and manage its own affairs, including the discipline of the spiritual leaders it employs, free from intrusion by courts.

As stated in *Tubra*, the issue here is one of first impression for this Court. "No United States Supreme Court case *** specifically addresses the applicability of First Amendment protections to churches and other religious groups defending against allegations of defamation by a church pastor." *Tubra*, 225 P.3d at 869; App. 16a-17a.

This case is about the scope of First Amendment protection for a church and its officials, as well as the related issue of subject matter jurisdiction, and does not involve a dispute about the underlying facts. The Court may assume that plaintiff was defamed.

Because there is no ruling by the Court on the question presented, the First Amendment has been interpreted in conflicting and irreconcilable ways by many state and federal courts in nearly identical fact patterns, as shown below. Moreover, because the freedom of a religious community to select its spiritual leaders must also include the freedom to terminate and discipline them without interference by the State, this case presents a serious and overarching issue of importance for the Court and the entire country.

B. The Underlying Termination Dispute Between a Church and its Pastor

The Foursquare Church is a Christian denomination that traces its founding to the inspired work of Aimee Semple McPherson beginning in Los Angeles in 1923. As a hierarchical church, the Church has approximately 262,000 members organized into 14 districts across the U.S., and more than 64,000 churches and meeting places around the world. Its 1,865 U.S. churches are served by over 6,800 pastors called to ministry by the Church. Pastors profess their allegiance to the "Minister's Code of Ethics" and the Church's bylaws, and are expected to live lives of probity, modesty, and honesty. From 1981 until 2004, plaintiff was one of the Church's pastors.[1]

According to the doctrine and practices of the Church, plaintiff was duly selected and licensed as a pastor, and was assigned to be an Associate Pastor of the Church's congregation in Columbia City, Oregon. Financial difficulties forced Pastor Cooke, a divisional superintendent, to lay plaintiff off in September 2003.[2] However, Pastor Cooke, whose job is to assign prospective pastors to available openings, offered plaintiff a pastorate in Vernonia, Oregon.

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[1] Background information about the Church can be found on its website, www.foursquare.org.

[2] Plaintiff alleges that Pastor Cooke "was the Senior Pastor at the Columbia City Foursquare Church and directly supervised and directed plaintiff's job duties." (Complaint at ¶ 6; App. 32a.) Plaintiff alleges that Pastor Swor "was the regional superintendent for the Columbia District of the Foursquare Church and directly supervised and directed the job duties of both plaintiff and [Pastor] Cooke." (Complaint at ¶ 7; App. 32a.) "At all material and relevant times, plaintiff and [Pastors] Cooke and Swor were agents of" the Church. (Complaint at ¶ 8; App. 32a.)

Tubra, 225 P.3d at 864; App. 3a. Plaintiff agreed to this assignment. *Tubra*, 225 P.3d at 864; App. 4a.

In April 2004, plaintiff wrote himself a $3,000 check from a Church account, "explaining [to the local church business council] that the money had been earmarked for him as a gift." *Tubra*, 225 P.3d at 865; App. 5a. Later that year, plaintiff was being transitioned out as pastor of the Vernonia congregation, and an internal audit of the books, performed as a matter of routine practice, identified that check and raised questions. *Tubra*, 225 P.3d at 865; App. 6a.

What follows is from plaintiff's Third Amended Complaint filed on the first day of trial (App. D; Trial Transcript ("Tr") 25-27) and his trial testimony, and is undisputed for purposes of this Petition:

On September 15, 2004, while he was working as a Church pastor, plaintiff met with Pastor Swor, who stated that plaintiff was "being charged with misappropriation of church funds." *Tubra*, 225 P.3d at 865; App. 6a; Tr 132-133, 182. An internal audit found that plaintiff had written himself a check for $3,000, which the Church contended was improper. At this meeting, Pastor Swor asked plaintiff what he did with the $3,000 of Church money, and plaintiff admits that he said "I don't know," and that he had "no explanation" at that time for what happened to the money. *Tubra*, 225 P.3d at 865; App. 6a; Tr 133, 182.

Shortly after this meeting, plaintiff received a call from Pastor Swor's secretary telling him that he "was done at Vernonia and that same day to pack [my] bags and leave ***. After they asked me to leave, *** I left." *Tubra*, 225 P.3d at 865; App. 6a; Tr 134. As plaintiff himself noted, "[Pastor] Swor dismissed

plaintiff from his position at the Vernonia Foursquare Church and suspended his pastor's license with the [Church]." (Complaint at ¶ 20; App. 35a.)

Plaintiff thus admits that what happened was a "termination." (Complaint at ¶ 25; App. 37a.)

During this disciplinary process, Pastors Swor and Cooke composed a letter to the Vernonia Church congregation stating the basis for plaintiff's discipline so that speculation over his departure might be avoided. *Tubra*, 225 P.3d at 865; App. 7a. Plaintiff concedes that all allegedly defamatory statements were made solely *within* the Church by Pastors Swor and Cooke only. Specifically, plaintiff alleges that Pastor Cooke "read to the Vernonia congregation a letter, written in conjunction with [Pastor] Swor, in which he falsely accused plaintiff of misappropriating church assets." (Complaint at ¶ 21; App. 36a; App. F.)[3]

Plaintiff cites only one other allegedly defamatory communication. This is an internal Church email from Pastor Cooke to Teresa McGill, "[Pastor] Swor's

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[3] The letter is also filled with references to plaintiff's employment status, Church governance, and the Lord. It begins "**Greetings in the powerful and unchanging name of Jesus Christ!**" (bolding in original), and states that Pastor Swor "felt it needful for the church membership to be aware" of his findings concerning "a financial misappropriation" by plaintiff, the "former pastor." (App. 48a-50a.) The letter concludes: "Where it is not the intention of the district to harm anyone's personal reputation, it is sometimes important to bring difficult issues to light, so that nothing will hinder the future work of the church. It is our hope that the Lord would bear witness to our testimony, and that the open and gracious disclosure of the truth would allow the church to move on in a spirit of unity and trust." (App. 51a.)

secretary," in which Pastor Cooke told Ms. McGill, who was responding to plaintiff's request for a copy of the letter at issue, that plaintiff had "demonstrated a willingness to lie and steal, and to purposely sew [sic] discord against the division." (Complaint at ¶ 22; App. 36a; App. G.)

Through these communications, plaintiff alleges that petitioners imputed to him an "unfitness" to be a pastor, which "damaged" him "spiritually," and that petitioners defamed him through implying that he was "an enemy of the church." (Complaint at ¶¶ 29, 32, 42, 47, 52; App. 38a-39a, 41a-43a.)

In summary, plaintiff claims that he "was a pastor with the Foursquare Church until [petitioners] forced him to leave the ministry and publicly defamed him *to parishioners* by falsely accusing him of stealing church funds ***." (Complaint at p. 1 (emphasis added); App. 30a.)

Accordingly, petitioners objected to plaintiff's defamation claims on First Amendment grounds, including through an Affirmative Defense in their Answer to the Complaint, but the trial court initially refused to dismiss the claims. *Tubra*, 225 P.3d at 866-867; App. 10a-11a; Tr 25-27.

C. Grant of First Amendment Relief by the Trial Court after Verdict

At trial, Pastor Swor testified that he wrote the letter at issue because "the congregation had a right to know what was happening," and there was "a lot of speculation that we didn't want to take place. So we felt that our responsibility was to go to the congregation, have a specific meeting where we could talk to them about this ***." (Tr 274.) Pastor Cooke testified that the letter was written because congregation

members demanded an explanation of "what happened to their money," and that because of "all the rumors that have been flying around," the Church needed "to come out and address it, have a meeting, write a letter, something before you send another pastor out here." (Tr 394-395.)

Pastor Swor testified that the phrase "sowing discord" that was used in the email at issue is "an ecclesiastical term, a biblical term. To sow discord or false reports." (Tr 276.)

Plaintiff testified that the allegedly defamatory letter was "read from the pulpit" to "the congregation" on October 27, 2004. (Tr 137, 275.) Likewise, the undisputed trial testimony is that on November 30, 2004, Pastor Cooke sent the allegedly defamatory email only to Ms. McGill, Pastor Swor's administrative assistant. (Tr 227, 404-406, 409; App. G.)

At trial, plaintiff only asserted defamation claims. (Complaint at ¶¶ 26-55; App. 37a-44a; Tr 25-27.) The case was allowed to proceed to the jury when the trial court denied petitioners' directed verdict motion based on the First Amendment. *Tubra*, 225 P.3d at 867; App. 10a-11a.

Plaintiff's attorney then stated in his closing argument at trial that this case involves "*Church politics.* *** I want you to be thinking about is there another way [the Church] could've dealt with that issue ***. Could they have done things a little different rather than taking it to the level that they did." (Tr 508-509 (emphasis added).)

The jury then deliberated and awarded plaintiff $200,000 in economic damages for lost income. (Complaint at ¶¶ 31(a), 51(a); App. 38a, 43a, 47a.)

Plaintiff also alleged that petitioners caused him non-economic damages by "denying him the ability and opportunity to pursue his spiritual calling and by calling his moral character into question before the Foursquare Community," and by "making him an object of suspicion in *that* community ***." (Complaint at ¶¶ 31(c)-(d), 51(c)-(d) (emphasis added); App. 39a, 43a.) The jury responded by awarding him $155,000 in non-economic damages. (App. 47a.)[4]

However, the trial court later granted petitioners' JNOV motion based on the First Amendment, holding that "this case is absorbed" in the "employment relationship" between plaintiff and the Church, and "that's what the current cases speak to." *Tubra*, 225 P.3d at 867; App. 11a.

D. Court of Appeals of Oregon Reverses and Rejects First Amendment Defense

The Court of Appeals of Oregon reversed the JNOV for petitioners and reinstated the jury's verdict, holding that the First Amendment did not bar plaintiff's defamation claims. *Tubra*, 225 P.3d at 873; App. 27a. The court reframed petitioners' First Amendment jurisdictional objection to the power of courts to adjudicate claims arising out of the discipline of a church pastor into a question about "absolute privilege" as a defense to defamation claims. *Tubra*, 225 P.3d at 867-868; App. 11a-15a. Viewing the case in that light, the court considered and rejected the approach taken by the majority of courts

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[4] The jury also found that the "qualified privilege" to plaintiff's defamation claims was abused, an issue on which the jury was instructed to consider the nature of the communications and the purposes of the Church officials who made them. *Tubra*, 225 P.3d at 867 and n. 3; App. 11a.

in other jurisdictions, which, as shown below, hold that the First Amendment bars pastor defamation claims. *Tubra*, 225 P.3d at 871-872; App. 20a-24a.

Instead, the court in *Tubra* found the rights protected under the First Amendment to be narrower, and the court created its own new test for when the First Amendment applies to church discipline cases:

> If the organization is of a religious character, and the alleged defamatory statements relate to the organization's religious beliefs and practices and are of a kind that can only be classified as religious, then the statements are *purely religious as a matter of law*, and the Free Exercise Clause bars the plaintiff's claim. In defamation law terms, those statements enjoy an absolute privilege.
>
> If, however, the statements—although made by a religious organization—do not concern the religious beliefs and practices of the religious organization, or are made for *a nonreligious purpose* –that is, if they would not "*always and in every context*" be considered *religious in nature*—then the First Amendment does *not* necessarily prevent adjudication of the defamation claim, but the statements may nonetheless be qualifiedly privileged ***.

Tubra, 225 P.3d at 872 (emphasis added); App. 24a-25a.

The court then held that because the statements here concerning a pastor's honesty and integrity would not "always and in every context" be considered "religious in nature," then they were only subject to a "qualified privilege." *Tubra*, 225 P.3d at

873; App. 25a. The court further held that in its "view, determining whether [petitioners] had reasonable grounds for believing the defamatory statements or whether the statements were made for purposes outside the purpose of the [qualified] privilege can be resolved without requiring the court to delve into the ecclesiastical concerns of the church." *Tubra*, 225 P.3d at 873; App. 27a.

On July 29, 2010, the Supreme Court of Oregon denied petitioners' timely Petition for Review. (App. 1a.)

REASONS FOR GRANTING THE PETITION

A. The Absence of Definitive Guidance by This Court Has Created a Conflict Among the Lower Courts About Whether the First Amendment Bars a Pastor's Defamation Claim Against His Church Arising Out of His Discipline and Termination by The Church.

This case offers the Court the chance to settle a serious conflict of opinion among the state and federal courts of appeals over the scope of First Amendment rights of religious institutions to discipline their own clergy without having those decisions second-guessed by secular courts through the vehicle of defamation claims.

As shown herein, many jurisdictions have offered divergent and irreconcilable opinions on the issue of institutional religious freedom before the Court. "With so many federal and state courts weighing in on the issue, it is no surprise that a split of authority has developed." *Calvary Christian School, Inc. v. Huffstuttler*, 238 S.W.3d 58, 64 (Ark. 2006).

This split of lower court authority on an important issue of federal constitutional law that this Court has never decided makes this case appropriate for review. *See also* John Gibeaut, "First Amendment Rites – Damaging words cost pastor his pulpit but land him big bucks," *ABA Journal*, June 2010, at p. 19 (discussing *Tubra* and stating that the "Oregon judges also appeared to go out of their way to invite U.S. Supreme Court review" by expressly recognizing that no U.S. Supreme Court case addresses the specific issue before the Court).

"Another problem for religious speech in defamation suits *** is that states have great discretion in establishing their own rules for liability in defamation suits, permitting inconsistent standards for the constitutional protection of religious speech." Chad Olsen, *In the Twenty-First Century's Marketplace of Ideas, Will Religious Speech Continue to be Welcome?: Religious Speech as Grounds for Defamation*, 37 Texas Tech L. Rev. 497, 527 (2005). "Many lower courts have taken a number of different approaches to resolving church controversies, and, consequently, they have rendered the jurisprudence surrounding the Free Exercise and Establishment Clause unpredictable for Americans concerned about religious freedom." *Id.* at 520.

Therefore, this petition should be granted because whether the U.S. Constitution bars a pastor's claims against his own Church should not depend on the jurisdiction where the lawsuit is filed. This case presents the Court with the opportunity to settle this issue of first impression and provide a uniform First Amendment analysis applicable to all jurisdictions.

Here, the Oregon court extended a conflict among the courts of last resort in the states and wrote a new rule that conflicts with the First Amendment, the relevant decisions of this Court, and the majority of lower courts, which hold that the First Amendment bars pastor defamation claims. *See Cha v. Korean Presbyterian Church of Washington*, 553 S.E.2d 511, 517 (Va. 2001), *cert. denied*, 535 U.S. 1035 (2002) ("most courts that have considered the question whether the Free Exercise Clause divests a civil court of subject matter jurisdiction to consider a pastor's defamation claims against a church and its officials have answered that question in the affirmative").

The Virginia Supreme Court's decision in *Cha* confirms the constitutional difficulty with allowing pastor defamation claims against churches to proceed in secular courts. In *Cha*, the plaintiff pastor alleged that he was defamed and wrongfully terminated after being falsely accused by a church deacon of "the misuse of Church funds" ($100,000), much like plaintiff here. *Id.* at 512-513. The court held that "it lacked subject matter jurisdiction to review the plaintiff's claims against the [church]." *Id.* at 515.

Like plaintiff here, Pastor Cha alleged that the defamatory statements impugned "his honesty and integrity, values which are essential in his success as a pastor." *Id.* at 516. However, in contrast to the Court of Appeals of Oregon, the Virginia Supreme Court held that

> plaintiff's allegations of defamation against the individual defendants *cannot be considered in isolation, separate and apart from the church's decision to terminate his employment.* *** [I]f a civil court were to exercise jurisdiction of the plaintiff's [lawsuit] under these circumstances,

> the court would be compelled to consider the church's doctrine and beliefs because such matters would undoubtedly affect the plaintiff's fitness to perform pastoral duties and whether the plaintiff had been prejudiced in his profession. Neither the Free Exercise Clause nor [the] Constitution of Virginia permits a civil court to undertake such a role.

Id. at 516-517 (emphasis added).[5] *See also Heard v. Johnson*, 810 A.2d 871, 883 (D.C. 2002) (stating that under "most circumstances, defamation is one of those common law claims that is not compelling enough to overcome First Amendment protection surrounding a church's choice of pastoral leader," and dismissing the plaintiff pastor's defamation claim).[6]

---

[5] Just as in *Cha*, plaintiff here alleges that he was damaged by petitioners imputing to him an "unfitness" and "lack of integrity to perform his duties as a Foursquare pastor, and by prejudicing plaintiff in his pursuit of that chosen profession." (Complaint at ¶ 29; App. 38a.) *See also Patton v. Jones*, 212 S.W.3d 541, 555 (Tex. App. 2006), *rev. denied* (Tex. January 12, 2007) (dismissing the plaintiff's defamation claim because the statements were "based on the Church's perception that he was unfit" to serve as its Director of Youth Ministries).

[6] In contrast with *Tubra's* test, the court in *Heard* held that the "constitutional protections afforded by the Free Exercise clause (prohibiting civil court interference in disputes between ministers and churches) extend to defamation claims, when: (1) such a claim flows entirely from an employment dispute between a church and its pastor so that consideration of the claim in isolation from the church's decision as to the pastor is not practical, (2) the alleged 'publication' is confined within the church, and (3) there are no unusual or egregious circumstances." *Heard*, 810 A.2d at 885. *See also* n. 12, *infra* (discussing another First Amendment test from Pennsylvania applicable to defamation claims against religious institutions).

This is the holding of many other jurisdictions that dismiss clergy defamation claims, and many of these cases were recently decided. *Thibodeau v. American Baptist Churches of Connecticut*, 994 A.2d 212, 222 (Conn. App. 2010), *certification denied*, 3 A.3d 74 (Conn. 2010) (pastor's defamation claim concerned "letters published by members of the defendant [church] *within* the church community containing allegedly false statements about the plaintiff with respect to his fitness for ministry. This claim arises out of the defendant's relationship with the plaintiff, and its resolution would require an impermissible inquiry into the defendant's bases for its action and its ground for evaluating ministers.") (emphasis added); *Stepek v. Doe*, 910 N.E.2d 655 (Ill. App. 2009), *appeal denied*, 919 N.E.2d 366 (Ill. 2009) (priest accused of sexually abusing minors); *Reynolds v. Wood*, 998 So.2d 1058, 1059-1060 (Ala. App. 2007), *rev. denied* (Ala. June 20, 2008) (dismissing a deacon's defamation claim based on statements a pastor made about him during a sermon, holding that "courts may not decide the truth or falsity of such statements and, therefore, may not entertain claims pertaining to those issues. Furthermore, as a matter of policy, we have strong reservations about restricting the religious speech of a pastor from his pulpit.");[7] *Seefried v. Hummel*, 148 P.3d 184, 190 (Colo. App. 2005), *rev. denied*, 2006 WL 2590062 (Colo. 2006) (dismissing the plaintiff's defamation claim because "the statements at issue were made in the context of a meeting convened by the church and its board for church members to discuss whether Richard Seefried

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[7] Like the plaintiff in *Reynolds*, plaintiff here admits that the allegedly defamatory letter was "read from the pulpit" to "the congregation." (Tr 137, 275; App. F.)

should be terminated as pastor.");[8] *Ogle v. Church of God*, 153 Fed. Appx. 371 (6th Cir. 2005) (bishop); *Bourne v. Center on Children*, 838 A.2d 371 (Md. App. 2003), *rev. denied*, 846 A.2d 401 (Md. 2004) (pastor); *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929 (Mass. 2002) (priest's defamation claim concerned being called a "liar" by his leaders); *Jacobs v. Mallard Creek Presbyterian Church*, 214 F.Supp.2d 552 (W.D. N.C. 2002) (minister); *Jackson v. Presbytery of Susquehanna Valley*, 697 N.Y.S.2d 26 (N.Y. App. 1999) (defamatory statements reflected "adversely upon [the plaintiff's] fitness to continue serving as a minister"); *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. App. 1998) (rabbi sued for defamation based on a written statement by a temple official that he had committed a crime by physically striking another rabbi); *Jeambey v. The Synod of Lakes and Prairies*, 1995 WL 619814 (Minn. App. 1995) (dismissing the plaintiff minister's defamation claim based on statements in the defendant church's newspaper that plaintiff engaged in "sexual misconduct"); *Yaggie v. Indiana-Kentucky Synod*, 860 F.Supp. 1194 (W.D. Ky. 1994), *aff'd*, 64 F.3d 664 (6th Cir. 1995) (table) (pastor sued his church for defamation concerning a bishop's statement that the plaintiff needed "psychiatric treatment" and "resigned" his position, but the court held that the First Amendment barred plaintiff's claim); *Higgins v. Maher*, 258 Cal. Rptr. 757 (Cal. App. 1989), *rev. denied* (Cal. August 10, 1989), *cert. denied*, 493 U.S.

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[8] Just like in *Seefried*, Pastor Swor testified that he wrote the allegedly defamatory letter because "the congregation had a right to know what was happening," and "we felt that our responsibility was to go to the congregation [and] have a specific meeting where we could talk to them about this ***." (Tr 274.)

1080 (1990) (dismissing a priest's defamation claim against a bishop relating to statements about sexual misconduct); *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986), *cert. denied*, 479 U.S. 885 (1986) (minister).[9]

The application of the First Amendment in these jurisdictions is robust, broadly protecting religious institutions even when church members seek damages for statements made within the context of church discipline. *In re Godwin*, 293 S.W.3d 742, 746-749 (Tex. App. 2009) (court did not have jurisdiction over a defamation claim by a church member against a church and its pastor based on a written statement the pastor "read to the congregation from the pulpit" accusing the plaintiff of attempting to bribe other church members because the statement "was directed to church governance and maintaining harmony within the congregation");[10] *Brady v. Pace*,

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[9] Identical results occur even with non-clergy church employees. *Trice v. Burress*, 137 P.3d 1253 (Ok. App. 2006), *rev. denied* (Ok. June 19, 2006) (Youth Director); *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253, 261-263 (Ind. App. 1999) (the plaintiff was terminated as Director of Religious Education for a Catholic parish, and the defendant pastor stated that plaintiff "cannot be trusted with seven-year-old children"). The court in *Trice* also rejected the argument that the First Amendment defense no longer applies when a defamatory statement is made after a church employee is terminated because examination of the statement still "requires an impermissible inquiry into Church disciplinary matters, barred by the First Amendment." *Trice*, 137 P.3d at 1258-1259. *See also Seefried*, 148 P.3d at 190-191 (reaching the same holding as to a pastor's defamation claim based on post-termination statements).

[10] Much like in *Godwin*, plaintiff here admits that the allegedly defamatory letter was "read from the pulpit" to "the congregation," and the letter states that it was intended to "allow the church to move on in a spirit of unity and trust." (Tr 137, 275; App. 51a.)

108 S.W.3d 54, 55-60 (Mo. App. 2003) (church member's defamation claim against church pastors barred where the defendants stated, like Pastor Cooke here, that the plaintiff was "sowing discord" within the church; the court affirmed the JNOV for defendants, holding that the court was "without jurisdiction" because the "libelous remarks are clearly related to Defendants' belief that [plaintiff's] conduct within the church required he be disciplined," and "the remarks were made to people associated with the Church" and thus "fall within the scope of First Amendment protection."); *Schoenhals v. Mains*, 504 N.W.2d 233, 234-236 (Minn. App. 1993) (court dismissed church members' claim for defamation based on a letter a pastor wrote and "read to the entire congregation" stating that the plaintiffs were expelled from the church because of their desire "to consistently create division" and due to plaintiffs "lying").

These jurisdictions interpret and apply the First Amendment broadly to protect, not narrow or "purely" religious questions (as determined by secular courts), but the entire church disciplinary process itself from being second-guessed by courts. They recognize that just because an allegedly defamatory statement sounds secular in nature when viewed in isolation does not mean that it is "nonreligious." As explained in *Downs v. Roman Catholic Archbishop of Baltimore*, 683 A.2d 808 (Md. App. 1996), where the court, pursuant to the First Amendment, dismissed a priest's defamation claim concerning his "honesty" being questioned,

> [q]uestions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light of religious

> precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church. *** The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.

Id. at 812-813 (citation and internal quotations omitted).

For this reason, the courts in the majority of jurisdictions bar tort claims by pastors against their own religious communities, finding that, in context, even simple words like "honesty" and "fitness" relate to religious beliefs and to the expectations of church leaders and congregants about their leaders. As further shown below, such matters cannot be second-guessed by secular courts without trampling the rights of religious communities protected by the First Amendment.

The cases above contrast with the decisions in *Tubra* and in other jurisdictions, which draw a different, and we submit incorrect, line for First Amendment purposes. The court in *Tubra* cited and rejected *Heard*, *supra*, and its three-part test, and instead found guidance in *Marshall v. Munro*, 845 P.2d 424 (Alaska 1993). *Tubra*, 225 P.3d at 871-872 and n. 10; App. 21a-25a. In *Marshall*, a minister discharged over allegations of sexual impropriety sued for defamation because his congregation recited the reasons for his discharge to a prospective congregation. The court believed the claim could be resolved without delving into "religious" questions because, unlike the present case, the claim did not require the court to judge plaintiff's "qualifications" as a pastor. *Marshall*, 845 P.2d at 428. The area circumscribed

by the First Amendment in Alaska in a case like this one is thus much smaller than in the majority of other cases.[11]

A few other jurisdictions follow this approach. *See Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084, 1103 (Pa. 2009) (defamation claim brought by a student expelled from a Catholic school permitted);[12]

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[11] *Marshall* has been rejected by other courts. *See Yaggie*, *supra*, 860 F.Supp. at 1198-1199 (the court held that *Marshall* was distinguishable because *Marshall* "found that the dispute did not concern plaintiff's qualifications as a pastor," and the court chose "not to follow the *Marshall* rationale" because "we cannot allow it to outweigh the substantial federal authority holding to the contrary;" the court further held that "all matters" concerning "the interaction between a church and its pastor" are "of ecclesiastical concern. It makes no difference that the ecclesiastical dispute fails to touch on church or religious doctrine," and acknowledged that "the alleged defamatory statements do not express any religious principles or beliefs. However, the fact remains that this action is the result of a conflict confined within the Resurrection Lutheran Church, concerning the employment relationship of its minister").

[12] Reversing the dismissal of the claim, the court in *Connor* held that "in determining whether to apply the deference rule, the fact-finding court must: (1) examine the elements of each of the plaintiff's claims; (2) identify any defenses forwarded by the defendant; and (3) determine whether it is reasonably likely that, at trial, the fact-finder would ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiff's claims without 'intruding into the sacred precincts.'" *Connor*, 975 A.2d at 1103 (citation omitted). The new three-part "sacred precincts" test from *Connor*, along with the tests from *Heard* and *Tubra* (which cited and rejected *Heard's* test), means that two different states (and D.C.) have three different three-part tests for determining whether the federal constitution bars defamation claims by clergy and religious institution members. The Court should accept review to resolve this conflict.

Calvary Christian School, *supra*, 238 S.W.3d 58 (the First Amendment did not bar a defamation claim brought by a student expelled by a Christian school); *House of God v. White*, 792 So.2d 491 (Fla. App. 2001) (the plaintiff church member's defamation claim against the defendant pastor held not barred by the First Amendment); *Drevlow v. Lutheran Church*, 991 F.2d 468, 469-472 (8th Cir. 1993) (the First Amendment did not bar the plaintiff minister's libel claim because "we are unable to predict that the evidence offered at trial will definitely involve the district court in an impermissible inquiry" into the defendant's religious beliefs).[13]

Therefore, courts in the various states and federal circuits interpret the same First Amendment text very differently, formulating their own different tests and allowing for varied protections. Lower courts are construing this Court's First Amendment decisions in conflicting ways concerning whether churches can be held liable for statements made solely to congregants in the course of intra-church discipline. Thus, a national denomination like the Foursquare Church enjoys First Amendment protection for the discipline of its pastors in Virginia and Colorado, but not in Oregon or Alaska. The proper resolution of the meaning of the First Amendment's text is for the

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[13] Many more cases reflecting the split of lower court authority on the issue of first impression before the Court are summarized in the secondary legal literature. *See* George Blum, *Defamation of Member of Clergy*, 108 ALR5th 495 (2003); Constance Frisby Fain, *Defamation of Church Member by Church or Church Official*, 109 ALR5th 541 (2003).

Court to accept review of this issue of first impression and settle this conflict.[14]

B. The Decision Below Conflicts With Decisions of this Court and Signals a Need for this Court to Protect the Rights of Religious Institutions.

"This Court has explained that the purpose of the Establishment and Free Exercise Clauses of the First Amendment is to prevent, as far as possible, the intrusion of either the church or the state into the precincts of the other." *Lynch v. Donnelly*, 465 U.S. 668, 672 (1984) (citation, quotations, and brackets omitted).

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[14] This case is also appropriate for review because the facts relating to why the First Amendment bars plaintiff's defamation claims are undisputed. This Court and Oregon's courts hold that the allegations in the operative Complaint must show that subject matter jurisdiction exists. *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936); *Dippold v. Cathlamet Timber Co.*, 193 P. 909, 911-913 (Or. 1920). Taking plaintiff's own allegations as true, all defamatory statements were made by Church officials solely within the Church, and they all relate to why the Church disciplined plaintiff, which shows that courts lack subject matter jurisdiction over his claims. *See* App. D; *Heard*, 810 A.2d at 885; *Cha*, 553 S.E.2d at 517. The Court can also assume that plaintiff *was* defamed as found by the jury, and the undisputed evidence at trial summarized in *Tubra* also establishes that the First Amendment bars plaintiff's claims. *See Heard*, 810 A.2d at 877 (a church's immunity under the First Amendment "is purely a question of law" that is "separate from the merits of [a pastor's] defamation claim"); *Brady*, *supra*, 108 S.W.3d at 55-60 (affirming the JNOV for the defendant pastors against a church member's defamation claim based on the statement that the plaintiff was "sowing discord" within the church).

This linchpin principle is being eroded and will continue to erode without clear guidance from this Court. The writ should thus be granted to clarify and protect this important principle of federal constitutional law.

This Court in *Watson v. Jones* held:

> All who unite themselves to such a [religious] body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.

Watson v. Jones, 80 U.S. (13 Wall.) 679, 729 (1871).

"Religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. *** [T]hese organizations must be protected by the Free Exercise Clause.'" *Corp. of The Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 341-342 (1987) (Brennan, J., concurring) (citing Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1389 (1981)). An "organization's claim to autonomy is strongest with respect to internal affairs, including relationships between the organization and all persons who have voluntarily joined it. The voluntary nature of religious activity has played a prominent role in church autonomy cases from the

beginning." Laycock, 81 Colum. L. Rev. at 1403 (citing *Watson*).

What *Watson* forbids is what the Oregon court has allowed here. Plaintiff chose to work as a pastor for the Church. He was not an employee of a government agency or secular business, for example. By choosing Church work, he agreed to comply with the standards of the Church and to accept its internal disciplinary decisions. *See Higgins*, *supra*, 258 Cal. Rptr. at 759-761 (pursuant to the First Amendment, dismissing a priest's defamation claim against a bishop arising from accusations of assault and "dangerous tendencies," holding that "secular courts will not attempt to right wrongs related to the hiring, firing, discipline or administration of clergy. Implicit in this statement of the rule is the acknowledgement that such wrongs may exist, that they may be severe, and that the administration of the church itself may be inadequate to provide a remedy. The preservation of the free exercise of religion is deemed so important a principle as to overshadow the inequities which may result from its liberal application. In our society, jealous as it is of separation of church and state, one who enters the clergy forfeits the protection of the civil authorities in terms of job rights;" the court also held that if "civil courts enter upon disputes between bishops and priests because of allegations of defamation," then "it is difficult to conceive the termination case which could not result in a sustainable lawsuit."); *see also* Laycock, 81 Colum. L. Rev. at 1409 and n. 269 ("When an employee agrees to do the work of the church, he must be held to submit to church authority in much the same way as a member. *** Of course there will be disputes between churches and their employees. But such

disputes should be resolved internally, without government interference.").

The Church determined that plaintiff misappropriated Church money and should be terminated, and that he was "sowing discord" within the Church. All of the allegedly defamatory statements were made by Church pastors solely *within* the Church and only to other church members. Plaintiff was not defamed in public through the media.[15]

Also, it is undisputed that the statements at issue all related to plaintiff's conduct "during his time as pastor." *Tubra*, 225 P.3d at 864; App. 3a.

Tubra thus attacks the *Watson* foundation on which churches rely: That they will be free from government intrusion into wholly intra-church disciplinary matters, especially concerning the conduct of their pastors, whose mission is to speak for the church. Plaintiff did not like the result of the Church's internal disciplinary decision, so he appealed to the secular courts for money damages.

Under *Watson*, plaintiff's defamation claims should be barred because secular courts lack subject matter jurisdiction over such claims by a pastor against a church. Indeed, in the *Cha*, *Heard*, *Bourne*, *Thibo-*

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[15] *Cf. Hayden v. Schulte*, 701 So.2d 1354, 1356-1357 (La. App. 1997), *writ denied*, 709 So.2d 737 (La. 1998) ("It is one thing to say that churches must be free of governmental interference to conduct matters of *internal* discipline and organization, even when those matters touch upon the reputations of those effected [sic]. It is quite another to say that churches have the unfettered right to make unsubstantiated statements of an essentially secular nature *to the media* destructive of a priest's character as we read Father Hayden's [defamation] petition alleges occurred in this case.") (emphasis added).

deau, *Stepek*, *Hiles*, *Downs*, *Ogle*, *Hutchison*, and *Patton* decisions cited above, the courts all cite *Watson* to support their holdings that the defamation claims are barred. *See also Jacobs*, 214 F.Supp.2d at 557 (dismissing the plaintiff's defamation claim, citing *Watson* and holding that "in accepting the position of Senior Pastor," plaintiff "yielded to the jurisdiction of the church").

Likewise, the decision below conflicts with *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). There, this Court held that there is "no dispute that questions of *church discipline* and the composition of a church hierarchy are at the core of ecclesiastic concern," and that the First Amendment permits "hierarchical religious organizations to establish their own rules and regulations for internal discipline and government ***. [T]he Constitution requires that civil courts accept their decisions as *binding* upon them." *Id.* at 717, 724-725 (emphasis added).

Plaintiff admits that this case involves the discipline of a Church pastor and the composition of the Church's hierarchy. He alleges that Pastor Swor falsely accused him of misappropriating Church assets, and then "dismissed plaintiff from his position," which was a "termination," and suspended his pastor's license. (Complaint at ¶¶ 20, 25; App. 35a, 37a.)

The Oregon court here drew its lines based on its reading of property dispute cases like *Jones v. Wolf*, 443 U.S. 595 (1979), in which this Court has permitted the states to apply "neutral principles of law" to decide which faction of a church owns property. *Tubra*, 225 P.3d at 869; App. 16a. Also, *Wolf* requires resort to religious documents for proof,

and deference to the religious body is mandatory whenever a "neutral principles" review becomes entangled in religious meaning. *Wolf*, 443 U.S. at 603-604.

The *Wolf* rule in property cases thus could not apply to allow the courts to police other disputes between pastors and their churches, no matter how the disputes are framed. *See Olson v. Luther Memorial Church*, 1996 WL 70102 at *1-*3 (Minn. App. 1996) (dismissing the plaintiff pastor's defamation claim based on the First Amendment and holding that "[n]eutral principles of law analysis is inappropriate in this case because it does not involve a church property dispute").

Moreover, this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), not mentioned by the court in *Tubra*, conflicts with the result in *Tubra*. In *Smith*, in the course of holding that a criminal statute did not violate the First Amendment, the Court relied on the fact that the case concerned "a free exercise claim *unconnected with any communicative activity*," and that there was "no contention that Oregon's drug law represents an attempt to regulate *** the communication of religious beliefs ***." *Id.* at 882 (emphasis added). In contrast with *Smith*, this case does involve the communication by petitioners of their belief that plaintiff was "sowing discord" within the Church, and the communication to Church members of the reasons why the Church disciplined their pastor.

Also, *Smith* only involved "individual" rights. *Id.* at 876, 878-879. The present case, however, involves important issues of institutional autonomy, including a church's ability to discipline its own pastors as it sees fit; its relationship with the persons it employs

to carry out its religious mission; and its right to speak to its own members solely within the church about its pastors in the manner that it sees fit without fear of liability in secular court. As confirmed in *Smith*, *id.* at 877, this Court's decisions recognize that First Amendment protections extend not only to matters of faith, but also to "church administration" and to "the operation of *** churches." *Milivojevich*, 426 U.S. at 710; *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107 (1952).

Thus, not only does the decision below conflict with protections afforded by this Court for a church to discipline its clergy free from interference by courts, it also infringes on the Church's rights of free speech and freedom of association separately protected by the First Amendment.

Doctrinally, *Tubra* confirms a drift in the First Amendment jurisprudence of the state and federal courts. A robust interpretation of the First Amendment in favor of the rights of religious institutions as exhibited in *Watson* and *Milivojevich* is being undermined by lower courts reading into cases from this Court that implicate different issues (like title to property). Lower courts are allowing greater leeway for the regulation of individual conduct by holding that the First Amendment *only* protects that which is, in the words of *Tubra*, "always and in every context *** religious."

Tubra thus ignores the religious employment context of an allegedly defamatory statement. Plaintiff admits that this case arises from the "termination" of a Church pastor, whose former congregation was informed of the grounds for the termination. (Complaint at ¶¶ 20-21, 25; App. 35a-37a.) The religious employment context of allegedly defamatory

statements is cited as a key reason why the majority of courts bar clergy defamation claims. *Heard,* 810 A.2d at 884 (noting that in the majority of cases, "the alleged defamatory statements did not overtly express any religious principles or beliefs, but all the actions resulted from conflicts 'confined within' the churches involved," and that "the courts found that it was impossible to consider the plaintiffs' allegations of defamation in isolation, separate and apart from the church[s'] decision to terminate [the pastors'] employment.") (citations omitted).

On its face, *Tubra's* new test improperly involves secular courts in issues of internal church discipline and governance. For example, the jury in *Tubra* separately found that petitioners abused the qualified privilege applicable to the statements at issue. (App. 46a.) However, the process of resolving the qualified privilege also violates the Church's First Amendment rights. As noted in other cases, if the Church and its pastors

> were to raise a qualified, or "conditional," privilege defense, the court would be forced to determine whether [petitioners] were acting in good faith or with malice. Resolution of this issue would require assessment, at a minimum, of the motives of the church members who uttered the allegedly defamatory statements. Such a determination could not occur without a subjective evaluation of their choice of spiritual leader.

Seefried, supra, 148 P.3d at 191 (citation omitted).

The Oregon court below entertains the hope that courts will be able to draw a line in a way that avoids infringement of constitutional rights, forgetting the holding of this Court that "the very process of

inquiry" violates First Amendment rights. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). *See also Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F.Supp. 1286, 1287-1290 (D. Minn. 1993) (the plaintiff was a church pastor responsible for maintaining church financial records and sued for defamation after he was terminated, but the court granted the defendant church's summary judgment motion, holding that "the very process of inquiry" into a church's reasons for its actions violates the First Amendment, and that resolution of plaintiff's "defamation claim would require the court to review [the church's] bases for terminating him, an ecclesiastical concern, and the veracity of [its] statements. The court determines that such an inquiry would implicate the concerns expressed in the First Amendment.") (citation omitted).

Therefore, to avoid entanglement in church governance, "the very process of inquiry" forbidden by this Court, this case should have been dismissed by the trial court based on plaintiff's own allegations *before* the jury rendered a verdict. Plaintiff's allegations in his operative Complaint fail to meet his burden to establish that a secular court has subject matter jurisdiction over his claims arising from church discipline. *See McNutt*, 298 U.S. at 189; *Dippold*, 193 P. at 911-913. Instead, Oregon's courts have improperly assumed for themselves the impermissible task of judging what is and is not a "religious purpose" and whether a statement is or is not "purely religious." *See Tubra*, 225 P.3d at 872; App. 24a-25a.

Courts are untrained in a particular religion's customs and practices and cannot, in a wholly secular manner, decide whether a statement is "religious in nature" or has a "purely religious" purpose. *See*

Seefried, 148 P.3d at 190-191 (it "does not matter whether, as plaintiffs allege, the offending statements were secular in nature" because they "related directly to a church process that resulted in Richard Seefried's termination as pastor. Accordingly, evaluation of the statements in isolation of this process, with respect to any of [the] claims here, is not possible.").

To allow a secular jury to decide such issues of "Church politics" (as plaintiff's attorney characterized the dispute to the jury), discipline, as well as a pastor's "fitness" and "integrity" (Complaint at ¶ 29; App. 38a), makes secular courts the arbiter of internal church disputes that are not their province. *See State ex rel Gaydos v. Blaeuer*, 81 S.W.3d 186, 196-198 (Mo. App. 2002) (dismissing a defamation claim by a Catholic school principal based on the defendant religious officials accusing her of having an affair with a priest because a court cannot sit "in judgment" on the "politics" of a church, but allowing another defamation claim to proceed because the remark was "published to a third person" outside the church and was "not connected" to her conduct as an employee).

Juries are not entitled to decide whether what was said by church officials solely within their church about why a pastor was disciplined is defamatory, or whether such a statement was made for a solely "religious purpose" or not. "When a defamation claim arises entirely out of a church's relationship with its pastor, the claim is almost always deemed to be beyond the reach of civil courts because resolution of the claim would require an impermissible inquiry into the church's bases for its action." *Heard*, *supra*, 810 A.2d at 883.

Finally, by resolving conflicts about the proper interpretation of its First Amendment jurisprudence, this Court would solve two other problems. First, the *Tubra* decision is already encouraging the filing of new clergy defamation cases against churches in Oregon, and, as shown herein, clergy defamation claims against churches are increasing nationwide. "Accusations of misconduct, discussions of [a pastor's] misconduct within the church, and the emotional distress and exaggerated language that accompany such activities seem to us to be unavoidable parts of the difficult process by which dissatisfied churches end employment relationships with their pastors." *Id.* at 887.

There is thus a national interest in clarifying the federal constitutional standards that apply to tort claims by pastors and other church employees against the churches and other religious organizations that employ them. The refusal to decide the question presented here will only add to the proliferation of cases exploiting the split of opinion. *See Meyer v. The Episcopal Diocese of Oregon*, Multnomah County (Oregon) Circuit Court Case #1003-03934 (priest defamation lawsuit filed after *Tubra* was decided); *Williams v. New Song Community Church*, Multnomah County (Oregon) Circuit Court Case #1007-10097 (pastor defamation lawsuit filed after *Tubra* was decided); *see also* Gibeaut, *ABA Journal*, June 2010, at p. 19 (Professor Steven K. Green, Director of The Center for Religion, Law and Democracy at Willamette University College of Law, stating that the court in *Tubra* "even acknowledged that they were pushing the envelope," and noting that "Green and other observers predict that the initial victory in Oregon will encourage others.

'I think it has the potential, certainly, of emboldening plaintiff lawyers—and surely clergy—to invite the courts to take another look,' Green says.").

Second, and coupled with increased litigation of these kinds of cases, the refusal to resolve the question here chills the rights of faith communities to take disciplinary action if church leaders refrain from action because they fear getting sued if their conduct is not deemed "purely religious," as *Tubra* requires. On this issue, Justice Brennan's concurring opinion in *Amos*, *supra*, is again instructive:

> What makes the application of a religious-secular distinction difficult is that *the character of an activity is not self-evident*. As a result, determining whether an activity is religious or secular requires a searching case-by-case analysis. *This results in considerable ongoing government entanglement in religious affairs.* Furthermore, this prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity. While a church may regard the conduct of certain functions as integral to its mission, a court may disagree. A religious organization therefore would have an incentive to characterize as religious only those activities about which there likely would be no dispute, even if it genuinely believed that religious commitment was important in performing other tasks as well. As a result, the community's process of self-definition *would be shaped in part by the prospects of litigation*.

Amos, 483 U.S. at 343-344 (citation omitted; emphasis added).

The effect of the *Tubra* decision is to coerce churches and other religious organizations to tailor their methods and restrict their activities and statements to satisfy the State. That result is expressly forbidden by the First Amendment.

The decision below perpetuates a conflict with the decisions of this Court. For more than a century, the Court has made plain that the State cannot second-guess the internal governance and disciplinary decisions of religious communities. Allowing secular juries to award damages because of how language was used, not in the general society, but entirely within the Church by Church leaders speaking only to Church members about the discipline of their pastor, is contrary to those bedrock constitutional principles as interpreted by this Court.

Allowing the ruling below to stand will also encourage other courts to limit the constitutional rights of religious bodies. This limitation can occur directly through the tort system effectively "taxing" the disciplinary structure of any religious body that a secular jury thinks was not acting in a "purely religious" manner. The growth of this kind of litigation will also result in chilling the freedom of all religious bodies to act according to their doctrine solely within the four walls of their congregation.

The Oregon court's decision below significantly undermines the overarching principles embodied in the First Amendment. This is why petitioners' writ should be granted and the Court should resolve the issue of first impression concerning the First Amendment presented by this case.

CONCLUSION

For the foregoing reasons, and pursuant to U.S. Supreme Court Rule 10(c), the petition for a writ of certiorari should be granted.

Respectfully submitted,

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